

1 PARSONS BEHLE & LATIMER
2 Michael R. Kealy, Esq., NV Bar No. 971
3 Ashley C. Nikkel, Esq., NV Bar No. 12838
4 50 W. Liberty Street, Suite 750
5 Reno, Nevada 89501
6 Telephone: (775) 323-1601
7 Email: mkealy@parsonsbehle.com
anikkel@parsonsbehle.com

8
9 *Attorneys for Plaintiff*
10 *Union Pacific Railroad Company*

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
APR 17 2018	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

11
12 UNION PACIFIC RAILROAD COMPANY, a | Case No. 3:17-cv-00477-LRH-VPC
13 Delaware corporation,

14 Plaintiff,
15 v.

16 WINECUP GAMBLE, INC., a Nevada
17 corporation; and PAUL FIREMAN, an
individual,

18 Defendants.

19
20 **REVISED STIPULATION AND
[PROPOSED] PROTECTIVE ORDER**

21
22 WHEREAS, the parties to the above-captioned action (the "Action"), [i.e., plaintiff
23 UNION PACIFIC RAILROAD COMPANY ("Plaintiff"), and defendants and WINECUP
24 GAMBLE, INC. and PAUL FIREMAN ("Defendants") [individually, a "Party," and collectively,
25 the "Parties"], acknowledge that during the course of the litigation of the Action certain matters
26 may be requested to be produced that may constitute or contain trade secret, confidential research,
27 development, financial, or otherwise proprietary commercial, information (collectively,
28 "Protected Information") within the meaning of Rule 26(c) of the Federal Rules of Civil
Procedure ("Rule[s]"); and

1 WHEREAS, the Parties intend to protect such Protected Information from inappropriate
2 disclosure and use,

3 WHEREAS, the Parties previously filed a Stipulation and [Proposed] Protective Order
4 [ECF No. 53] on March 30, 2018;

5 WHEREAS, the Court rejected the Stipulation and [Proposed] Protective Order in a
6 Minute Order on March 31, 2018 [ECF No. 54], permitting the Parties leave to submit a revised
7 stipulated protective order that comports with LR IA 10-5 and the holdings of *Kamakana v. City*
8 & *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler*
9 *Group, LLC*, 809 F.3d 1092 (9th Cir. 2016);

10 WHEREAS, the Parties have revised the Stipulation and [Proposed] Protective Order in
11 order to comply with LR IA 10-5 and the holdings of *Kamakana* and *Center for Auto Safety*;

12 NOW, THEREFORE, IN LIGHT OF THE FOREGOING, the Parties, by and through
13 their respective attorneys of record in the Action, hereby stipulate and agree that this Revised
14 Protective Order (the “Order”) may be entered by the above-entitled Court and that upon its entry
15 by the Court the Order shall govern all Protected Information produced or exchanged in the
16 Action, subject to the terms and conditions set forth herein.

17 **I. APPLICABLE RULES REMAIN UNCHANGED**

18 Nothing herein shall alter or change in any way the discovery provisions of the Federal
19 Rules of Civil Procedure (“Federal Rules”), the Local Rules of the United States District Court
20 for the District of Nevada (“Local Rules”), or the Court’s Scheduling Order. Identification of any
21 individual pursuant to this Protective Order does not necessarily make that individual available
22 for deposition or any other form of discovery outside of the restrictions and procedures of the
23 Federal Rules or the Local Rules. Nothing in this Order shall be construed to require a Party to
24

25

26

27

28

1 produce or disclose information not otherwise required to be produced under the Federal Rules,
2 Local Rules, or orders of this Court.

3 **II. CONFIDENTIAL INFORMATION**

4 For purposes of the Order, the following definitions shall apply:

5 A. "Document(s)" has the meaning set forth in Federal Rule 34(a), and includes all
6 tangible written, recorded (electronically or otherwise), or graphic material, whether produced or
7 created by a Party or another person, and whether produced pursuant to the Federal or Local
8 Rules, by agreement of the Parties, or otherwise, and includes, without limitation, documents,
9 interrogatory responses, responses to requests for admissions, deposition transcripts and exhibits,
10 pleadings, motions, affidavits, affirmations, declarations, and briefs, or any portion of any of the
11 above.

12 B. "Confidential Information" means any information that a Party or the producing
13 person or entity believes in good faith constitutes any trade secret or other confidential research,
14 development, financial, or proprietary commercial information within the meaning of Federal
15 Rule 26(c)(7). Confidential Information does not include information that is: (i) generally known
16 prior to any disclosure hereunder; (ii) generally known without breach of this Order; (iii)
17 approved for release by written authorization of the Party who owns the information; (iv)
18 disclosed to the receiving Party by a third party lawfully possessing such document or
19 information and under no obligation of confidentiality; (v) developed independently by the
20 receiving Party or any employees or designated agents thereof who have not had access to the
21 producing Party's "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY"
22 documents or information and without any use whatsoever of information received by the
23 receiving Party under this Order; (vi) publicly-available advertising materials; or (vii) materials
24 that on their face show that they have been published to the general public. Parties shall
25
26
27
28

1 designate or mark Confidential Information with a conspicuous "CONFIDENTIAL" label or
2 legend.

3 C. "Confidential Document" means any Document containing Confidential
4 Information and the Parties shall designate or mark Confidential Documents with a conspicuous
5 "CONFIDENTIAL" label or legend.

6 D. Confidential Information or Documents may be additionally designated
7 "CONFIDENTIAL – ATTORNEYS' EYES ONLY." The "CONFIDENTIAL – ATTORNEYS'
8 EYES ONLY" designation is reserved for Confidential Information or Documents that constitute
9 proprietary financial or technical data or commercially sensitive competitive information,
10 including, but not limited to, Confidential Information obtained from a nonparty pursuant to a
11 current Nondisclosure Agreement, Confidential Information relating to future products not yet
12 commercially released, strategic plans, marketing information, financial information, consumer
13 account, or transaction information, and any other information the disclosure of which is likely to
14 cause harm to the competitive position of the producing Party. Parties shall designate or mark
15 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" documents or information with a
16 conspicuous "CONFIDENTIAL – ATTORNEYS' EYES ONLY" label or legend.

17 E. The term "copy" as used herein means any photographic, mechanical or
18 computerized copy or reproduction of any document or thing, or any verbatim transcript, in whole
19 or in part, of such document or thing.

20 **III. DISCLOSURE OF CONFIDENTIAL INFORMATION**

21 1. Confidential Documents and Information shall not be used or shown,
22 disseminated, or in any way communicated to anyone for any purpose whatsoever, except as
23 provided for below.

1 2. Confidential Documents and Information that are designated "CONFIDENTIAL"
2 may be disclosed only to the following persons ("Qualified Persons"):

3 a. Members or management for each Party, provided that each such
4 representative is involved in the prosecution or defense of this Action and has the need to
5 know such information in the prosecution or defense of this Action.

6 b. Retained and in-house counsel for the Parties to this Action, including their
7 paralegal assistants and secretaries, and employees or agents of counsel, including jury
8 and graphics consultants and copying or document scanning personnel retained by
9 counsel, to the extent reasonably necessary to render professional services in this Action,
10 including appeals;

11 c. Persons identified in a document designated as "CONFIDENTIAL" as an
12 author of the document in part or in whole, or persons identified on the document as one
13 to whom a copy of such document was sent prior to its production in this action;

14 d. Deposition Witnesses where at least one of the following conditions
15 applies:

16 i. the witness is a current employee of the designating Party;
17 ii. the witness is an author of the document or received the document
18 during the time when such person was an employee of the designating Party;
19 iii. the witness's name appears on the Confidential Document or
20 Information as a person who has previously seen or had access to the Confidential
21 Document or Information;
22 iv. the designating Party has consented on the record of the deposition
23 to the showing of the Confidential Document or Information to the witness; or
24

25
26
27
28

v. the Party wishing to show the witness the Confidential Document or Information notifies the designating Party of that desire, with a specific listing of the Confidential Documents or Information to be so shown, and the designating Party consents in writing to such showing.

Witnesses being shown Confidential Documents or Information under subparagraphs (d) (ii), (iii), (iv), or (v) shall not be allowed to retain copies of the Confidential Documents or Information. However, a witness who was shown Confidential Documents or Information during a deposition may review the Confidential Documents or Information while reviewing his or her transcript, provided that any Confidential Documents or Information is not retained by the witness after he or she has completed his or her review of the transcript for accuracy or in preparation for further testimony in the case;

e. Court officials and assistants involved in the Action;

f. Court reporting personnel involved in taking or transcribing testimony in the Action, provided that any such court reporting personnel agrees that all Confidential Documents and Information designated as such under this Order shall remain "confidential" and shall not be disclosed, except pursuant to the terms of this Order, and that any notes or transcriptions of such testimony (and any accompanying exhibits) will be retained by the reporter or delivered to counsel of record; and

g. Outside consultants or experts, including their clerical support staff, retained for the purpose of assisting counsel in the Action.

3. Confidential Documents and Information designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be available only to persons identified under paragraphs

1 2(b), (c), (d), (e), (f), and (g) above, and shall not be available to persons identified under
2 paragraph 2(a) above.

3 4. Confidential Documents and Information shall be used solely for the prosecution
4 or defense of the Action.

5 6. Notwithstanding the provisions of paragraphs 2 or 3 above, any Party is free to use
6 its own "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" documents
7 and information for any purpose.

9 7. Before any person described in paragraph 2(a), 2(d)(v), or 2(g) is given access to
10 Confidential Documents or Information, the individual to whom disclosure is to be made shall
11 sign and date a Declaration and Confidentiality Agreement substantially in the form of the
12 attached "Exhibit A." A copy of such executed declaration shall be held by counsel of record for
13 the Party so disclosing the Confidential Documents or Information. The Parties agree not to use
14 the declarations for any purpose other than monitoring and enforcing compliance with this Order.

16 8. Counsel for the Parties to whom Confidential Documents or Information have
17 been furnished shall be responsible for restricting disclosure in accordance with the provisions of
18 this Order.

19 9. Unless otherwise permitted by statute, rule or prior court order, papers filed with
20 the court under seal shall be accompanied by a contemporaneous motion for leave to file those
21 documents under seal, and shall be filed consistent with the court's electronic filing procedures in
22 accordance with Local Rule IA 10-5. Notwithstanding any agreement among the parties, the
23 party seeking to file a paper under seal bears the burden of overcoming the presumption in favor
24 of public access to papers filed in court. *Kamakana v. City & County of Honolulu*, 447 F.2d 1172
25 (9th Cir. 2006); *see also Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir.
26 2016).

1 9. Discovery Material shall be designated as follows:

2 a. In the case of documents, designation shall be made prior to production by
3 stamping or writing the word “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES
4 ONLY” on each page of any such document or, where appropriate, on the first page of an
5 identifiable group of documents. Batches of electronic documents within a production set may be
6 treated as containing the “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES
7 ONLY” designation provided that the cover letter and CD or drive containing the designated
8 electronic documents provides the designation;

9 b. Documents may be produced for inspection prior to their designation as
10 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” but shall be
11 designated as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” prior
12 to the transmission of a physical copy of the document to the party requesting the document;

13 c. In the case of interrogatory answers, designation shall be made by
14 stamping or writing the word “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” on the
15 relevant portion of any such answer; and

16 d. In the case of depositions, counsel for any of the Parties or the deponent
17 may designate specific testimony or transcript pages as “CONFIDENTIAL,” or
18 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (1) at a deposition by notice on the record,
19 or (2) within fourteen (14) days after the receipt of the deposition transcript by notifying counsel
20 for all Parties and for the deponent of the Confidential designation. Until the expiration of the 14-
21 day period, all of the testimony contained in the transcript volume shall be treated as
22 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” To the extent that Confidential Documents
23 or Information contained therein are used in depositions, at hearings, or at trial, such documents
24 or information shall remain subject to the provisions of this Order, along with the transcript pages
25
26
27
28

1 of the deposition testimony and/or trial testimony referring to the Confidential Documents or
2 Information, without the need for further designation.

3 10. At any time after the delivery of Confidential Documents or Information, counsel
4 for the Party or Parties receiving the Confidential Documents or Information may challenge the
5 Confidential designation of all or any portion thereof according to the following procedures:

6 a. If after receipt of documents or information from the producing Party
7 designated "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
8 the receiving Party believes all or a portion of the documents or information do not qualify
9 for the designation(s) attached or given thereto, the receiving Party may object in writing
10 to the confidentiality designation(s) of such documents or information. The objection
11 shall set forth with specificity the grounds the receiving Party asserts for maintaining that
12 the documents or information do not qualify for the given confidentiality designation(s).
13 At all times until after resolution of the objection either by the Parties or by the Court, the
14 receiving Party shall treat the documents or information subject to the objection according
15 to designation(s) given by the producing Party, and shall limit access to those documents
16 or information as required by this Order;

17 b. After receipt of the receiving Party's objection, the producing Party shall
18 then have seven (7) calendar days (plus three [3] days if the objection is served other than
19 by hand delivery, e-mail transmission or facsimile transmission) to respond to the
20 objection setting forth with specificity the grounds the producing Party asserts for
21 maintaining that the documents or information do qualify for the given confidentiality
22 designation(s); and

23 c. After receipt of the producing Party's response, the receiving Party shall
24 then have fourteen (14) calendar days (plus three (3) days if response is served other than
25

1 by hand delivery, e-mail transmission or facsimile transmission) to file a motion and/or
2 objection with the Court seeking to have the Court alter the confidentiality designation(s)
3 of the documents subject to the objection. The producing Party shall bear the burden of
4 establishing that the designated documents or information that are the subject of the
5 objection are properly designated.
6

7 11. A producing Party that mistakenly fails to mark an item as "CONFIDENTIAL," or
8 "CONFIDENTIAL – ATTORNEYS EYES ONLY" at the time of production, or fails to provide
9 a written description of orally disclosed Confidential Information, shall not be deemed to have
10 waived, in whole or in part, any claim of confidentiality, either as to the specific documents or
11 information disclosed or as to any other information thereto on the same or related subject matter.
12 In the case of documents, any such mis-designated materials shall be designated as
13 "CONFIDENTIAL," "CONFIDENTIAL – ATTORNEYS EYES ONLY" as soon as reasonably
14 possible after the producing Party becomes aware of the failure to mark. Such correction and
15 notice thereof shall be made in writing, accompanied by substitute copies of each item,
16 appropriately marked as Confidential material. Within five (5) days of receipt of the substitute
17 copies, the receiving Party shall return or destroy the previously unmarked items and all copies
18 thereof. In the case of orally disclosed information, a written description of the information must
19 be provided, as set forth above.
20
21

22 12. The Party or Parties receiving Confidential Documents or Information shall not
23 under any circumstances sell, offer for sale, advertise, or publicize them.
24
25

26 13. After termination of this litigation, the provisions of this Order shall continue to be
27 binding, except with respect to those documents and information that become a matter of public
28 record. The Court retains and shall have continuing jurisdiction over the Parties and recipients of
29

1 the Confidential Documents and Information for enforcement of the provisions of this Order
2 following termination of this litigation.

3 14. This Order shall apply to any non-party to the Action who may be called upon to
4 make discovery or provide deposition or other testimony in connection with this action, including,
5 without limitation, providing any non-party documents, information, or testimony through
6 discovery taken pursuant to Rule 45. Such non-party shall be deemed to avail itself of the
7 provisions and protections of this Order by making production consistent with it, such as by
8 designating or marking Confidential Documents or Information produced by the non-party with a
9 conspicuous "CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS EYES ONLY" label or
10 legend.

11 15. The provisions of this Order shall not terminate at the conclusion of the Action.
12 Within thirty (30) days after the final conclusion of all aspects of the Action by judgment not
13 subject to appeal or by settlement, Confidential Documents and all copies of same, and all
14 documents containing or referring to Confidential Information, other than trial and deposition
15 transcripts, trial and deposition exhibits, and briefs, counsel work papers, memoranda, or other
16 documents or papers filed with the Court, and declarations executed in the course of this
17 litigation, shall either be returned to the producing Party or person or destroyed. All Parties or
18 persons that received Confidential Documents, if requested by the producing Party, shall execute
19 a certificate of compliance with this section and shall deliver the same to counsel for the
20 producing Party not more than sixty (60) days after such certification is requested. The Court
21 may return to counsel for the Parties, or destroy, any sealed material at the end of the litigation,
22 including any appeals.

23 16. The mistaken production of documents subject to the protection of the attorney-
24 client privilege, work product doctrine, or other privilege shall not constitute a waiver of such
25 privilege or protection, and does not put in issue or constitute the affirmative use of the advice of
26 counsel or of any privileged communications. The producing Party shall notify the receiving

1 Party in writing of any such mistakenly produced documents as soon as reasonably practicable
2 after the producing Party becomes aware of their mistaken production. Upon receipt of such
3 notice, the receiving Party shall, within three (3) business days, or sooner if that is practicable,
4 return all such documents to the producing Party, along with any copies made thereof. In the
5 event the receiving Party either challenges the assertion of privilege or contends there has been a
6 waiver, the receiving Party may retain the materials to the extent necessary to make such a
7 challenge.

8 17. This Order shall be binding upon the Parties and their attorneys, successors,
9 executors, personal representatives, administrators, heirs, legal representatives, assigns,
10 subsidiaries, divisions, employees, agents, independent contractors, or other persons or
11 organizations over which they have control.

12 DATED this 11th day of April, 2018.

13 PARSONS BEHLE & LATIMER

14 /s/ Ashley C. Nikkel

15 Michael R. Kealy, Nevada Bar No. 971
16 Ashley C. Nikkel, Nevada Bar No. 12838
17 *Attorneys for Plaintiff Union
Pacific Railroad Company*

DATED this 11th day of April, 2018.

SNELL & WILMER, L.L.P.

/s/ Michael R. Menssen

*(Signed by filing attorney with permission of
counsel)*

William E. Peterson, Nevada Bar No. 1525
Ryan Stoldtmeister, Nevada Bar No. 14281
- and -

David J. Jordan, Utah Bar No. 1751

(Admitted Pro Hac Vice)

Michael R. Menssen, Utah Bar No. 15424
(Admitted Pro Hac Vice)

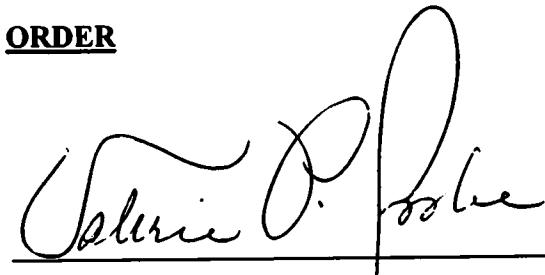
Stoel Rives, LLP

*Attorneys for Defendant Winecup Gamble,
Inc., and for Defendant Paul Fireman*

ORDER

IT IS SO ORDERED.

DATED: April 17, 2018



United States Magistrate Judge

1
2
3
EXHIBIT A
4
5
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**FORM DECLARATION AND CONFIDENTIALITY
AGREEMENT CONFIRMING RECEIPT AND
ACCEPTANCE OF TERMS AND CONDITIONS OF
PROTECTIVE ORDER**

1

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

7

8

9 UNION PACIFIC RAILROAD COMPANY, a
10 Delaware corporation,

11 Plaintiff,

12 v.

13 WINECUP GAMBLE, INC., a Nevada
14 corporation; and PAUL FIREMAN, an
individual,

15 Defendants.

Case No. 3:17-cv-00477-LRH-VPC

**DECLARATION AND
CONFIDENTIALITY AGREEMENT
CONFIRMING RECEIPT AND
ACCEPTANCE OF TERMS AND
CONDITIONS OF PROTECTIVE
ORDER**

16

17

I, _____, declare that:

18

1. My address is _____.

19

2. My present employer is _____.

20

3. My present occupation or job description is _____

21

_____.

22

4. I have received a copy of the Protective Order in this action signed by the Court on

23

_____.

24

5. I have carefully read and understand the provisions of the Protective Order.

25

6. I will comply with all of the provisions of the Protective Order.

27

28

7. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any and all confidential materials disclosed to me in the matter of *Union Pacific Railroad Company v. Winecup Gamble, Inc.*, 3:17-cv-00477-LRH-VPC (D. Nev.).
8. I will return all confidential material that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained.
9. I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Protective Order in this action.
10. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

Signature

Printed Name